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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

THE NVIDIA GPU LITIGATION	)	Case No. C 08-04312 JW
	)	
	)	<u>CLASS ACTION</u>
<hr/>		
This Document Relates To:	)	PLAINTIFFS' MEMORANDUM OF
	)	POINTS AND AUTHORITIES IN
	)	SUPPORT OF MOTION FOR
ALL ACTIONS.	)	ATTORNEYS' FEES AND EXPENSES
	)	AND TIME AND EXPENSE
	)	REIMBURSEMENTS FOR PLAINTIFFS
	)	
	)	DATE: December 20, 2010
	)	TIME: 9:00 a.m.
	)	CTRM: 8, 4th Floor
	)	JUDGE: Hon. James Ware
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs submit this Memorandum in Support of Their Motion for Attorneys' Fees and Expenses and Time and Expense Reimbursements to Plaintiffs. This application is filed in conjunction with Plaintiffs' Memorandum in Support of Their Motion for Final Approval of Settlement ("Final Approval Brief"). By this Motion, Plaintiffs' Counsel, apply to this Court for:

1. An award of attorneys' fees and expenses in the total amount of \$13,000,000.
2. Approval of time and expense reimbursements to be deducted from the fee and expense award, for certain of the named Plaintiffs in the aggregate amount of \$32,947.50, which is within the amount of "not to exceed" / "up to" \$50,000 stated in the Notice to the Class.

As more fully discussed in the Final Approval Brief and the Declaration of Jeff S. Westerman in Support of (1) Motion for Final Approval of Settlement and (2) Motion for Attorneys' Fees and Expenses and Time and Expense Reimbursement for Plaintiffs ("Westerman Decl."), many months of hard-fought, arm's-length negotiations between the Parties, with substantial assistance of Honorable Layn R. Phillips (Ret.), a former federal judge and respected mediator with significant experience in mediating large, complex class actions like this, resulted in the Stipulation and Agreement of Settlement and Release dated August 12, 2010 ("Settlement Agreement") (Docket No. 238, Ex. A). On September 15, 2010, the Court granted Preliminary Approval of the Settlement, and approved the proposed notice program. *See* Court's Order dated September 15, 2010 (Docket No. 250).

With oversight from Judge Phillips and after the parties reached agreement on the non-fee aspects of the Settlement, the Parties began negotiations over the fee-related aspects of the Settlement. Consistent with the terms of the parties' Settlement Agreement, Plaintiffs' Counsel are requesting the Court approve payment in the amount of \$13 million for both fees and reimbursement of expenses incurred during the course of this litigation. In addition to the settlement consideration *plus* the costs of class notice and cost of settlement administration, NVIDIA agreed to separately pay the requested attorneys' fees and expenses. The Settlement

1 also provides that Plaintiffs' Counsel may apply to the Court for time and expense  
 2 reimbursements for certain of the named Plaintiffs, not to exceed \$50,000 in the aggregate, in  
 3 connection with their roles in overseeing the litigation, responding to discovery requests, and  
 4 traveling to depositions, among other things. The requested fee amount would result in a 1.24  
 5 multiplier based on the approximately \$10.1 million in lodestar time over the past two years.  
 6 Based on the significant complexity, hard-fought nature of the litigation, and the scope of the  
 7 defect at issue, such a low multiplier is more than reasonable to compensate Plaintiffs' Counsel  
 8 for such an exceptional result for the Settlement Class. Further, the requested fee is far less than  
 9 25% of the repair and replacement value achieved for the Settlement Class. This is well within  
 10 the standard range of percentage fees approved by federal courts in this Circuit and nationwide.

11 All of Plaintiffs' Counsel's time and expense was contingent and has not been  
 12 reimbursed, even though this case has been pending for over two years and counsel expended  
 13 over \$400,000 in litigation expenses for the benefit of the class. As detailed below, the fee and  
 14 expense amount requested is reasonable, whether based on a percentage of recovery or lodestar  
 15 multiplier approach. NVIDIA agreed to pay this amount. This is an important factor for the  
 16 Court to consider, as it shows the market forces at work in terms of setting a reasonable fee that  
 17 NVIDIA agreed to pay upon Court approval.

18 The parties negotiated the payment of attorneys' fees and costs, and time and expense  
 19 reimbursements to certain named Plaintiffs, only after reaching agreement on all other material  
 20 terms of the Settlement Agreement.

21 NVIDIA's agreement to pay attorneys' fees and costs in no way reduces any of the many  
 22 benefits secured for the proposed Settlement Class.

23 Further, notice of this motion for fees and reimbursement for costs has been provided to  
 24 proposed Settlement Class members. To date, only one objection to the fee and expense  
 25 application has been received, and that objection does not indicate anything other than a generic  
 26 aversion to attorneys getting paid in all cases generally.

1 By this motion, Plaintiffs' Counsel respectfully request that the Court award attorneys'  
2 fees and reimbursement of costs and payment of time and expense reimbursements to certain  
3 named Plaintiffs pursuant to the terms of the Settlement. The requested fees and expenses are  
4 fair and reasonable, and this motion merits the Court's approval.

5  
6 **II. PLAINTIFFS' FEE AND EXPENSE APPLICATION SHOULD BE FULLY  
APPROVED BY THE COURT**

7 **A. Plaintiffs' Counsel are Entitled to an Award of Attorneys' Fees and  
8 Reimbursement of Their Expenses**

9 The Settlement Agreement provides for the payment of attorneys' fees and expenses by  
10 NVIDIA in the amount of \$13,000,000. Having reached a Class Settlement with NVIDIA, it is  
11 well established that Plaintiffs' Counsel are entitled to seek fees and expenses from NVIDIA.  
12 Courts have long recognized the "common fund" or "common benefit" doctrine, under which  
13 attorneys who create a common fund or benefit for a group of persons may be awarded their fees  
14 and costs based on the common benefit achieved. *See Boeing Co. v. Van Gemert*, 444 U.S. 472,  
15 478 (1980) ("A litigant or a lawyer who recovers a common fund for the benefit of persons other  
16 than himself or his client is entitled to reasonable attorney's fees from the fund as a whole."); *see*  
17 *also Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977) (holding that the common fund doctrine permits  
18 a litigant who maintains a suit that results in the creation of a fund in which others share a  
19 common interest to be reimbursed for their attorneys' fees and expenses from that fund).

20 In this case, the fees and costs requested by Plaintiffs' Counsel will not take away from  
21 any relief to the Class. Instead, the parties negotiated and agreed to a reasonable fee award  
22 separate and apart from the benefits conferred upon the Class Members.

23 In fact, the parties' agreement on fees in this action is what the United States Supreme  
24 Court has described as the ideal towards which litigants should strive. In *Hensley v. Eckerhart*,  
25 461 U.S. 424, 437 (1983), the Supreme Court stated that, "[a] request for attorney's fees should  
26 not result in a second major litigation. Ideally, of course, litigants will settle the amount of [the]  
27 fee[s]." *Id.* Fee arrangements between plaintiffs and defendants in class actions are to be  
28



1 encouraged, particularly where, as here, the attorneys' fees to be requested are negotiated  
 2 separately after the settlement terms of the class claims has been agreed to by the parties and are  
 3 to be paid on top of the class consideration. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714,  
 4 720 (5th Cir. 1974) ("In cases of this kind, we encourage counsel on both sides to utilize their  
 5 best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to  
 6 attorneys' fees."). California courts likewise defer to fee agreements between parties if the  
 7 agreement is otherwise valid. *See, e.g., Cazares v. Saenz*, 208 Cal. App. 3d 279, 287 (1975);  
 8 *Melendres v. L.A.*, 45 Cal. App. 3d 267, 282-83 (1975). California Code of Civil Procedure  
 9 § 1021 essentially codifies the principle that courts should generally respect attorneys' fee  
 10 agreements made by and between the parties. "Except as attorneys' fees are specifically  
 11 provided for by statute, the measure and mode of compensation of attorneys and counselors at  
 12 law is left to the agreement, express or implied, of the parties . . . ." *Id.*

13 Where the dollar value of the benefits can be difficult to quantify, an agreement on fees  
 14 and expenses is particularly appropriate and helpful to the Court. In *In re M.D.C. Holdings*  
 15 *Securities Litigation*, the court approved an attorneys' fee award in derivative shareholder suit in  
 16 amount agreed upon by the parties:

17 Plaintiffs' counsel are not, on the derivative settlement here, seeking an award of  
 18 fees out of the recovery -- what is commonly called a "common fund" situation.  
 19 Also, they are not seeking an award of fees against a defendant or the corporate  
 20 beneficiary over its opposition. Derivative counsel have sought approval of an  
 21 overall derivative settlement *which includes* as a part of the negotiated settlement  
 22 an agreed-upon fee payable by MDC from funds obtained by it from the insurance  
 23 carrier for its officers and directors in recognition of the cash recovery and other  
 24 substantial benefits which have been conferred upon MDC by reason of that  
 25 settlement. MDC was separately represented by independent and very competent  
 26 counsel throughout this case, including the negotiations which culminated in the  
 27 settlement. This Court has already indicated settlement of the derivative  
 28 settlement.

\* \* \*

The Supreme Court has stated that consensual resolution of attorneys' fee issues  
 is the ideal toward which litigants should strive.

*In re M.D.C. Holdings Sec. Litig.*, No. 89-0090, 1990 U.S. Dist. LEXIS 15488, at \*11-12 (S.D.  
 Cal. Aug. 30, 1990) (emphasis in original).

Here, the parties followed these principles by agreeing on an amount of fees and expenses that NVIDIA would pay, subject to Court approval. Moreover, the payment of attorneys' fees and expenses will not reduce or compromise the benefits to the proposed Settlement Class in any way. In fact, should this court not award the full fee request to Plaintiffs' Counsel, no benefit would flow to the Settlement Class; NVIDIA would simply keep the money.

**B. The Requested Attorneys' Fees are Reasonable and Appropriate**

**1. The Fees Should Be Presumed Reasonable Under the Circumstances**

The fact that NVIDIA, after extensive arm's-length negotiation with the assistance of highly-competent counsel and a mediator, agreed to this fee and expense amount is an important factor for the Court to consider in reviewing the fee and expense request. Because the substantive terms of the Settlement had been reached before these amounts were agreed to, the fee provision was negotiated in such a manner as to avoid any potential conflict with the Settlement Class, or any argument that such amounts were "traded off" for lesser class consideration. Westerman Decl., ¶ 38.

As Judge Posner observed in *In re Continental Illinois Securities Litigation*, 962 F.2d 566 (7th Cir. 1992), the virtue in the negotiation of the amount of fees by the adversarial parties to a settlement (the defendants who want to minimize the payment to be made versus the lawyers who wish to receive it) is that the "markets know market value better than judges do." *Id.* at 570. Here, the agreement as to the amount of the fees to be requested was negotiated under market conditions: Plaintiffs' Counsel wished to maximize fees to compensate them, as the law encourages, for risk, innovation, and preclusion of other work, while NVIDIA wished to pay the minimum amount it could, as any monies not approved would be retained by the company. The result is an arm's-length negotiated amount set by market forces, and resolved only after the other settlement terms had been agreed to in principle.

A presumption of reasonableness applies where the agreement is reached through arm's-length bargaining, counsel is experienced in similar litigation, and the percentage of objectors is

1 small. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001); *Lealao v. Beneficial*  
 2 *Cal., Inc.*, 82 Cal. App. 4th 19, 47 (2000). A leading treatise on class actions expounds upon this  
 3 precept:

4 [W]hen the defendants agree to settle with the class for a certain sum and, in  
 5 addition, to pay class counsel's attorneys' fees in a sum to be determined by the  
 6 court up to a specified limit to which the defendants will not object, the court may  
 7 conditionally approve that arrangement subject to any objections raised by class  
 8 members at the settlement hearing. Generally, an evidentiary hearing for fee  
 9 determination is obviated in a common fund case if no class members object to  
 10 the level of fees requested and class counsel furnishes sufficient underlying  
 11 factual data to permit the court to make a reasonable fee award.

12 4 *Newberg on Class Actions* § 11:29 (4th ed. 2010).

13 Plaintiffs' Counsel negotiated an award of attorneys' fees and expenses to be paid by  
 14 NVIDIA in addition to the Class benefits. Opposing counsel bargained at arm's-length before  
 15 arriving at a mutually acceptable fee. As recognized in *Lealao*, defendants are good indicators of  
 16 the value of plaintiffs' counsel's services. *Lealao*, 82 Cal. App. 4th at 37 ("[T]he defendant  
 17 usually has a fairly good idea of the range of fees that will be sought and the approximate  
 18 amount likely to be awarded.").

19 Further, when approving a class action settlement and awarding attorneys' fees and  
 20 reimbursing expenses, courts consider the number of objectors in relationship to the notice that  
 21 was provided. *Wershba*, 91 Cal. App. 4th at 245. Here, not only have approximately 5,123,594  
 22 potential Settlement Class members been sent individual notice in the U.S. mail and via e-mail,  
 23 notice also was published in USA Today and on the Internet. Web notices were posted on the  
 24 websites PCWorld.com, MacWorld.com, and PCMag.com. See Declaration of Katie Horton Re:  
 25 Notice Procedures, ¶¶ 8, 16-18. To date, only one objection to Plaintiffs' Counsel's motion for  
 26 attorneys' fees and expenses has been filed.<sup>1</sup> Westerman Decl., ¶ 74. Accordingly, the  
 27 attorneys' fees and costs requested by Plaintiffs' Counsel should be presumed reasonable.  
 28

<sup>1</sup> That objection, is predicated on the faulty premise that NVIDIA's payment of attorneys' fees  
 will ultimately drive up the cost of its products. The fee was negotiated with NVIDIA, the party  
 actually responsible for paying it. It is unlikely that NVIDIA would have consented to a number  
 so damaging to it that will materially impact the cost of NVIDIA's goods. Indeed, as discussed,

## 2. The Lodestar Approach

Analyzing Plaintiffs' requested fee award under the "lodestar" method confirms that the request is reasonable and appropriate. The fee and expense payment to be approved by the Court is reasonable when cross-checked using a lodestar/multiplier calculation, which results in a multiplier of less than two of the total lodestar incurred by Plaintiffs' Counsel. *Lealao*, 82 Cal. App. 4th at 51 (fees are appropriate if they are reasonable as cross-checked under both percentage of recovery and lodestar methods). As this payment is requested under California consumer protection statutes, such as the CLRA, the Song Beverly Act and the UCL, as well as under the Magnuson-Moss Warranty Act, it is appropriate to consider California state law fee jurisprudence in determining the reasonableness of the requested fee award. Declarations to support a fee application detailing the work performed and the reasonable hourly rate for such services provide ample evidentiary support for the requested amount. *Wershba*, 91 Cal. App. 4th at 255.

Using the lodestar method, attorneys' fees are calculated by multiplying the number of hours worked on the case by the hourly rate of each timekeeper. This provides the base "lodestar" amount, which is then enhanced by a multiplier to account for a variety of factors including, but not limited to: (1) the quality of the representation; (2) the contingent nature of the matter, both from the point of view of eventual success on the merits and from the point of view of securing a fee award; (3) the extent to which the litigation precluded other employment by the attorneys; (4) the amount involved and the results obtained on behalf of the class by plaintiffs' counsel; and (5) the continuing obligation of plaintiffs' counsel to devote time and effort to the litigation. *Serrano*, 20 Cal. 3d at 49.

Plaintiffs' Counsel incurred \$10,140,559.25 in hourly fees (and expect additional time and expense through the final approval process and continued monitoring of the settlement administration) and \$405,248.71 in unreimbursed costs. The chart set forth below shows: (1)

the fee is miniscule in comparison to the reserves NVIDIA actually took. This objection reflects nothing more than a generic dislike for lawyers, and should be disregarded.

each firm's base lodestar fee; (2) the number of hours expended by each firm; and (3) the costs incurred by each firm throughout the course of this litigation.

		<u>HOURS</u>	<u>COSTS</u>
Milberg LLP	\$2,911,423.25	6,270.75	\$134,252.16
Seeger Weiss	\$7,096.00	12.80	\$4,624.55
Doyle Lowther LLP	\$2,249,287.50	4,049.75	\$11,364.45
Zeldes & Haeggquist, LLP	\$78,336.25	147.75	\$1,602.27
Whatley Drake & Kallas, LLC	\$128,957.50	265.90	\$5,125.66
Gergosian & Gralewski LLP	\$56,230.00	135.75	\$20.36
The Baskin Law Firm	\$13,500.00	22.50	\$491.00
Horwitz Horwitz & Paradis	\$3,797,046.25	7,478.50	\$222,589.01
Kiesel Boucher & Larson	\$68,827.50	86.70	\$6,547.16
Consumer Law Group of California	\$143,936.00	278.00	\$339.00
Law Offices of Nicholas Koluncich III, LLC	\$78,525.00	209.40	\$1,921.34
Law Offices of James V. Bashian, P.C.	\$14,101.50	23.70	\$0.00
Wick Phillips, LLP	\$4,080.00	9.60	\$0.00
Shalov Stone Bonner & Rocco LLP	\$558,762.50	1,310.00	\$15,106.25
Sarraf Gentile LLP	\$11,287.50	22.50	\$0.00
Rothken Law Firm	\$19,162.50	36.50	\$1,265.50
<b>Total</b>	<b>\$10,140,559.25</b>	<b>20,360.10</b>	<b>\$405,248.71</b>

The fees and costs set forth in the chart above are supported by the declarations of Plaintiffs' Counsel submitted in support of this Motion. *See* Compendium of Declarations in Support of Motion for Attorneys' Fees and Expenses and Time and Expense Reimbursement for Plaintiffs ("Compendium of Declarations"), Exs. A; C-I; K-N; Q-T. The declarations identify the attorneys who worked on the case and their hourly rates. The declarations also itemize the costs each firm incurred. In determining the lodestar, courts can rely upon declarations submitted by plaintiffs' attorneys "evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case." *Wershba, supra*, 91 Cal. App. 4th

1 at 254-55. Here, Plaintiffs' Counsel has submitted such declarations, stating the number of hours  
2 spent working on this case and setting forth their standard hourly rates.

3 This lodestar is reasonable considering the substantial work performed during the course  
4 of litigation, using counsel's standard hourly rates that have been approved by courts over the  
5 last several years. *See* Westerman Decl. ¶ 71; *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.  
6 App. 4th 140, 155-56 (2006) (abuse of discretion not to use firm's standard full hourly rates in  
7 calculating lodestar, as rates were comparable to those charged by other counsel litigating  
8 consumer fraud issues); *Fischel v. Equitable Life Assurance Soc'y*, 307 F.3d 997 (9th Cir. 2002)  
9 (appropriate for court to consider litigation risk of non-payment in setting multiplier where  
10 counsel expected to receive additional compensation for such risk).

11 Plaintiffs' Counsel request a combined award of \$13,000,000 in attorneys' fees and costs.  
12 Of that amount, \$405,248.71 represents Plaintiffs' Counsel's unreimbursed costs. Deducting  
13 these costs from the total requested award reveals that Plaintiffs' Counsel seeks \$12,594,751.29  
14 in attorneys' fees. Based upon the attorneys' fees requested (\$12,594,751.29), the multiplier  
15 Plaintiffs' Counsel is seeking using the lodestar method is approximately 1.24 (*i.e.*, requested  
16 attorneys' fees \$12,594,751.29 divided by Plaintiffs' Counsel's aggregate lodestar amount  
17 \$10,140,559.25 equals approximately 1.24). Consideration of the recognized factors used to  
18 formulate a multiplier warrants a 1.24 multiplier in this case.

19 The low multiplier requested by Plaintiffs' Counsel shows this fee request is reasonable.  
20 In fact, considering the size of this Settlement, based on factors such as delay, result, and risk of  
21 non-payment, this request is presumptively reasonable. *Vizcaino v. Microsoft Corp.*, 290 F.3d  
22 1043, 1051 (9th Cir. 2002) (identifying federal survey of multipliers that show multipliers used  
23 by courts range between 1.0 and 4.0, and most range between 1.5 and 3.0); *Ketchum v. Moses*, 24  
24 Cal. 4th 1122, 1128 (2001) (referencing survey of multipliers recognizing range of between 2.0  
25 and 4.0 are average under California law); *Wershba*, 91 Cal. App. 4th at 255 (approving  
26 separately negotiated fee provision and noting that multipliers in range of 2 to 4, and even  
27 higher, are typical in class litigation); *Cazares*, 208 Cal. App. 3d at 288 (finding under California  
28

1 law trial court can appropriately approve a multiplier of 2.0 or more based on consideration of  
 2 risk and delay factors alone).

3 **a. Plaintiffs' Counsel are Highly Qualified and Have**  
 4 **Invested a Great Deal of Time and Effort Litigating**  
 5 **This Case**

6 The abilities of Plaintiffs' Counsel were essential to the success of this litigation. As  
 7 evidenced in the accompanying declarations, Plaintiffs' Counsel have substantial experience in  
 8 consumer class action litigation. Counsel's skills in developing evidence, technical expertise,  
 9 working with experts, and understanding the strengths and weaknesses of their respective cases  
 10 were critical to the results achieved for the Settlement Class. Plaintiffs' Counsel developed a  
 11 significant level of familiarity with the legal and factual issues sufficient to make a thorough  
 12 appraisal of the adequacy of the settlement and provide meaningful relief to the Settlement Class.

13 Further, Plaintiffs' Counsel invested substantial time and resources in the case.  
 14 Plaintiffs' Counsel spent more than 20,000 hours prosecuting this litigation and bringing the  
 15 matter to a successful resolution. The result of this combination of skill and hard work directly  
 16 benefitted the Settlement Class. For example, Plaintiffs' Counsel successfully opposed  
 17 NVIDIA's motion to strike class allegations. Westerman Decl. ¶ 18. In addition, several causes  
 18 of action in Plaintiffs' Amended Consolidated Complaint were upheld against the first motion to  
 19 dismiss. *Id.* Plaintiffs also amended claims under the Song-Beverly Act and Magnuson-Moss  
 20 Warranty Act and defended them against a subsequent motion to dismiss -- a ruling on which  
 21 was pending at the time of settlement. *Id.* Plaintiffs' Counsel also fully briefed, and argued, a  
 22 class certification motion -- a ruling on which was also pending at the time of settlement. *Id.*  
 23 ¶¶ 24-27. In addition, Plaintiffs' Counsel diligently served discovery on Defendants and key  
 24 non-parties, and filed appropriate discovery motions to secure relevant documents, and reviewed  
 25 over 200,000 documents. *Id.* ¶¶ 28-33. Plaintiffs' Counsel's in-house investigators and forensic  
 26 accountants also expended considerable time interviewing witnesses and analyzing NVIDIA's  
 27 financial disclosures relating to the claims. *Id.* ¶ 34.



1 The extensive work put into this case and thorough understanding of the issues involved  
 2 in the action, both legal and factual, enabled Plaintiffs' Counsel to obtain an extremely favorable  
 3 result for the Settlement Class.

4 **b. The Contingent Nature of the Representation**

5 Prosecution of this action has involved significant financial risk for Plaintiffs' Counsel,  
 6 who took this matter on a contingent basis, with no guarantee of recovery. Once counsel  
 7 undertook this litigation on behalf of the Settlement Class, they committed significant time and  
 8 resources to pursue it to its conclusion.

9 The commencement and prosecution of class action litigation is an inherently high-risk  
 10 proposition due to: (1) the contingent nature of class counsel's representation; and (2) the great  
 11 barriers to achieving success on the merits posed by procedural issues unique to class action  
 12 litigation. As a result, courts have recognized that the contingent nature of the attorneys' fee is  
 13 an important factor to be considered in determining the appropriateness of a requested fee. *See*  
 14 *City of Detroit v. Grinnell Corp.* 495 F.2d 448, 470 (2d Cir. 1974).

15 Class action litigation is intended to encourage the filing of claims to "vindicate[e] the  
 16 rights of individuals who otherwise might not consider it worth the candle to embark on  
 17 litigation in which the optimum result might be more than consumed by the cost." *Deposit Guar.*  
 18 *Nat'l Bank v. Roper*, 445 U.S. 326, 338 (1980). Contingent-type fee arrangements play a vital  
 19 role by giving a financial incentive to skilled attorneys to serve as class counsel. *Id.* at 338 n.9.  
 20 Plaintiffs respectfully submit that the requested fee of \$12,594,751.29 -- exclusive of the  
 21 reimbursement of expenses -- is entirely reasonable and consistent with the fees typically  
 22 awarded in such cases.

23 Courts have long recognized that class action litigation "is notably difficult and  
 24 notoriously uncertain." *Lewis v. Newman*, 59 F.R.D. 525, 528 (S.D.N.Y. 1973). Despite the  
 25 most vigorous and competent efforts of class counsel, success on the merits is never guaranteed.  
 26 When success is achieved, a substantial award is warranted. As the court recognized in  
 27 *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967):



1 The effective lawyer will not win all of his cases, and any determination of the  
 2 reasonableness of his fees in those cases in which his client prevails must take  
 3 into account the lawyer's risk of receiving nothing for his services. Charges on  
 4 the basis of a minimal hourly rate are surely inappropriate for a lawyer who has  
 5 performed creditably when payment of any fee is so uncertain.

6 *See also Meshel v. Nutri/System, Inc.*, 102 F.R.D. 135, 140 (E.D. Pa. 1984) ("The contingent  
 7 nature of the fee must be taken into consideration by us in fixing the final fee.")

8 Plaintiffs' Counsel risked a great deal of time and money, foregoing other work, to  
 9 represent Plaintiffs in this litigation, with no guarantee of success. All of the hours expended on  
 10 this case was time Plaintiffs' Counsel was unable to devote to other work.

11 **c. The Results Achieved on Behalf of the Class Members**  
 12 **Are Outstanding**

13 The proposed class action settlement provides an outstanding recovery for the Class. As  
 14 detailed in Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Final  
 15 Approval of Settlement, this Settlement provides for replacements of NVIDIA GPUs in certain  
 16 Dell or Apple notebooks, replacement of certain HP notebooks, and a fund for cash  
 17 reimbursements for amounts paid on repairs related to NVIDIA GPUs or MCPs. The benefits to  
 18 the proposed Settlement Class and extent of recovery afforded each Settlement Class member,  
 19 given the complained of allegations, is exceptional.

20 This exceptional Settlement is the result of dedication and hard work by Plaintiffs'  
 21 Counsel. NVIDIA acknowledged and agreed that the filing, pendency and prosecution of the  
 22 Litigation, including the demands made in connection therewith, provided valuable consideration  
 23 to the Settlement Class by being a causative factor in NVIDIA taking certain actions after  
 24 Plaintiffs filed the Litigation. Such actions included: (1) assisting certain Original Equipment  
 25 Manufacturers ("OEMs") in extending or enhancing warranties for the Class Computers;  
 26 (2) assisting certain OEMs to repair Class Computers at no cost to consumers; and (3) causing  
 27 NVIDIA to enter into the Settlement Agreement. Thus, NVIDIA also agreed to continue to  
 28 assist OEMs with their ongoing GPU, MCP, or motherboard replacement for Class Computers in  
 accordance with the OEMs' usual and customary repair processes and procedures during the  
 pendency of Final Approval and Final Judgment. Westerman Decl. ¶ 45.

Based on the foregoing factors, a 1.24 multiplier is appropriate and supportable under California case authorities. *See, e.g., Glendora Cmty. Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 479 (1984) (affirming a 12 multiplier of counsel’s hourly rate and rejecting the argument that the requested fee was exorbitant); *Wershba*, 91 Cal. App. 4th at 255 (“Multipliers can range from 2 to 4 or even higher”); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a lodestar enhancement of “two, three, four or otherwise.”).

### 3. The Percentage-of-the-Benefit Method Also Confirms the Requested Award is Reasonable and Appropriate

The Percentage-of-the-Benefit method further supports the reasonableness of the negotiated fee award. The Percentage-of-the-Benefit method allows the Court to determine the plaintiffs’ attorneys’ fee based upon a percentage of the total recovery. Under this method of calculating attorney’s fees, the court simply awards counsel a percentage of the value of the common fund. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

According to the Ninth Circuit, the “benchmark” award is 25% of the recovery obtained, with 20% to 30% as the customary range. *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). California state courts have also considered this 25% as a benchmark. *Lealao*, 82 Cal. App. 4th at 24.<sup>2</sup>

There are several indicators of value for this Settlement. Pursuant to any one of them, Plaintiffs’ Counsel’s requested fee award is far below the “benchmark” 25%. First, as the Court noted at the hearing on preliminary approval, the reserves taken by NVIDIA are one indicator: “But you’re valuing this board replacement and these computer replacements as somewhat in line with the reserve, in terms of the economic benefits to the class.” (H’rg Tr. 25:5-7, Aug. 30, 2010.) NVIDIA’s July 2, 2008 Form 8-K filed with the SEC revealed NVIDIA used weak die/packaging material in certain versions of its GPUs, leading to an initial charge of approximately \$196 million against revenue to cover anticipated customer warranty, repair,

<sup>2</sup> Fee awards of 30% or more are not uncommon. *See, e.g., In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378-79 (N.D. Cal. 1989) (finding that in most cases, benchmark is 30%).

1 return, replacement and other consequential costs and expenses. Westerman Decl. ¶ 72.  
 2 NVIDIA subsequently increased the amount of its financial reserve to \$315 million. *Id.* On the  
 3 day this settlement was signed, August 12, 2010, NVIDIA subsequently announced a further  
 4 charge of \$193.9 million specifically for “additional remediation costs, as well as the estimated  
 5 costs of a pending settlement of a class action lawsuit . . . related to this same matter [the weak  
 6 die/packaging material set].” *Id.* As discussed above, NVIDIA acknowledged Plaintiffs’ case  
 7 was a “causative factor” in NVIDIA’s decision to provide assistance to certain OEMs in their  
 8 efforts to extend warranties or repair Class Computers, which are included as part of the reserved  
 9 remediation and settlement costs. Settlement Agreement ¶ 2.14. Thus, in total, NVIDIA took  
 10 \$508.9 million in reserves for this problem. Even a fraction of that \$508.9 million dwarfs the  
 11 \$13 million fees and expenses requested here. Indeed, if the Court were to consider any one of  
 12 the three reserves taken by NVIDIA, the requested fees and expenses fall well below 25%.  
 13 Accordingly, when looking to the reserves, the requested fee is significantly less than the 25-  
 14 30% benchmark amount for common fund fee awards approved in other Ninth Circuit decisions.  
 15 *See Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990); *Paul, Johnson,*  
 16 *Alston & Hunt*, 886 F.2d 268.

17 Another indicator of value is the amount of money consumers would pay to receive these  
 18 repairs (without ever considering the value of the HP replacement computers component of this  
 19 settlement) were it not for the Settlement. Plaintiffs’ Counsel received reports from consumers  
 20 quoted and/or charged repair prices from \$300 to \$550 to fix the defective NVIDIA chip  
 21 problem in their computer. Westerman Decl., Exhibits A-C. Indeed, Plaintiff Todd Feinstein  
 22 himself paid \$300 for the repair of his Apple computer. While Plaintiffs’ Counsel has no way of  
 23 knowing how many computers will exhibit qualifying symptoms, no one disputes that the  
 24 potential number of repairs or replacements is in the millions. Notice was sent to 5,123,594  
 25 people, any of whom can potentially submit qualifying claims.<sup>3</sup> Horton Decl. ¶ 8. If even a  
 26

27 <sup>3</sup> Plaintiffs’ Counsel is informed that some individuals who own Dell computers received direct  
 28 notice that should not have because their computers do not contain NVIDIA chips. Plaintiffs’

1 fraction of these claimants receives a repair or replacement computer at a value of \$300 or more,  
 2 the value of the settlement is astronomical in comparison to the requested \$12,594,751.29 fee.  
 3 Importantly, the settlement covers *all* affected Class Members with adequate supporting  
 4 documentation, each of whom can have their Class Computers repaired or replaced, free of  
 5 charge. Further, as this Court ordered, the Court will oversee the claims process by requiring a  
 6 report from the administrator explaining all denials of claims. (Docket 250).

7 The requested \$12,594,751.29 attorneys' fee award is well below 25% of any one of the  
 8 three reserves taken by NVIDIA, to say nothing of their cumulative \$508.9 million. It is also  
 9 well below 25% of the total cost to have the Class Computers repaired or replaced were it not for  
 10 the Settlement. The benefits to Class Members here are concrete and undeniable -- anyone who  
 11 has a Class Computer can have it repaired or replaced, for free, and has recourse to this Court if  
 12 their claim is denied. The Percentage-of-the-Benefit method further confirms that the fee award  
 13 requested by Plaintiffs' Counsel is reasonable and appropriate.

14 **C. Plaintiffs' Counsel's Request for Reimbursement of Their Expenses is**  
 15 **Reasonable and Proper**

16 As set forth in the declarations of counsel submitted herewith to the Court, Plaintiffs'  
 17 Counsel have incurred a total of \$405,248.71 in unreimbursed expenses prosecuting this case on  
 18 behalf of the Plaintiffs. As one commentator noted, "the prevailing view is that expenses are  
 19 awarded in addition to the fee percentage." Alba Conte, *Attorney Fee Awards* § 2.08 at 107-113  
 20 (3d ed. 2004). Courts routinely reimburse plaintiffs' counsel for the costs incurred in presenting  
 21 cases on a contingent basis. *See In re Businessland Sec. Litig.*, No. 90-20476, 1991 U.S. Dist.  
 22 LEXIS 8962, at \*6-7 (N.D. Cal. June 14, 1991) (and cases cited therein); *In re Warner*  
 23 *Commc'ns Sec. Litig.*, 618 F. Supp. 735 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *In re*  
 24 *GNC S'holder Litig.*, 668 F. Supp. 450, 452 (W.D. Pa. 1987).

25  
 26  
 27 Counsel does not believe this number of people is large enough to materially impact an  
 28 assessment of the value of the benefit conferred.

Over the past two years of litigation against a well financed defendant represented by outstanding defense counsel, Plaintiffs' Counsel have incurred substantial costs consulting with computer/chip related experts. In particular, Plaintiffs' Counsel submitted detailed declarations in support of class certification. Plaintiffs' Counsel consulted with an expert specializing in chip set materials NVIDIA used to construct the chips at issue in this litigation. Plaintiffs' Counsel also incurred significant expenses conducting witness investigations, dealing with discovery documents and court filings, making photocopies, and traveling to attend hearings and depositions. In light of the expenses Plaintiffs' Counsel incurred to bring this case to its current settlement posture, Plaintiffs' Counsel's request for reimbursement of costs is reasonable and should be approved.

**D. Awarding Attorneys' Fees and Expenses in Class Actions is an Important Means of Protecting the Rights of Consumers**

Both the United States Supreme Court and the California Supreme Court have long recognized the need for class actions in consumer cases where recoveries are too small to warrant individual prosecution.

The reality is that appropriate awards of attorneys' fees are absolutely necessary in order to ensure that consumer rights are protected and vindicated. As the United States Supreme Court explained:

The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.

*Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

Over a quarter of a century ago, the California Supreme Court explained:

Modern society seems increasingly to expose men to . . . group injuries for which individually they are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all. This result is not only unfortunate in the particular case, but it will operate seriously to impair the deterrent effect of the sanctions which underlie much contemporary law.

1 *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 807 (1971) (quoting Kalven & Rosenfield, *Function of*  
 2 *Class Suit*, 8 U. Chi. L. Rev. 684, 686 (1941)); *see also*, *Linder v. Thrifty Oil Co.*, 23 Cal. 4th  
 3 429, 434-35 (2000) (“Courts long have acknowledged the importance of class actions as a means  
 4 to prevent a failure of justice in our judicial system.”). The concerns the Court expressed in  
 5 *Vasquez* apply precisely to this case. Individual consumers could or would not have undertaken  
 6 the years of investigation and litigation necessary to prosecute individual claims against the  
 7 defendant herein. A class action was necessary to vindicate the rights of the consumers.

8 Contingency fee litigation is always risky. Despite this risk, Plaintiffs’ Counsel secured  
 9 an excellent result in this litigation. Plaintiffs’ Counsel respectfully submits that the award of  
 10 their full request for attorneys’ fees and costs is therefore appropriate.

11 **E. Plaintiffs’ Counsel Requests Time and Expense Reimbursements for**  
 12 **Certain Named Plaintiffs**

13 Plaintiffs’ Counsel respectfully requests that the following named Plaintiffs be awarded  
 14 time and expense reimbursements calculated as detailed in their accompanying declarations:  
 15 \$7,800 for Todd Feinstein, \$4,987.50 for Nathan DeBockler, \$7,000 for Steven Nakash, \$7,830  
 16 for Lance Waidzunas, and \$5,330 for John Russo. These amounts are based on time some or all  
 17 of them variously expended dealing with NVIDIA and the OEMs on these issues, gathering  
 18 documents, attending depositions, consulting for the mediation, providing declarations and  
 19 considering the settlement to ensure it was reasonable, devoting many hours to this action for the  
 20 benefit of the Settlement Class. Westerman Decl., ¶ 70. These individuals aided not only  
 21 Plaintiffs’ Counsel, but the entire Settlement Class. Courts have recognized that class  
 22 representatives should receive a service payment for undertaking the burdens of a class  
 23 representative.

24 Many recent decisions, including many in the Ninth Circuit, approve time and expense  
 25 reimbursements to named plaintiffs in recognition of their efforts in achieving the results  
 26 obtained. Many cases note the obvious public policy reasons for encouraging individuals with  
 27 small personal stakes to serve as class plaintiffs in meritorious cases. *Cook v. Niedert*, 142 F.3d  
 28

1 1004, 1016 (7th Cir. 1998); *In re Cendant Corp.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002); *Van*  
 2 *Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (listing factors).  
 3 Decisions also note that such “awards” compensate named plaintiffs for their efforts and time  
 4 expended in representing the class, such as time spent in deposition or helping respond to written  
 5 discovery. In *In re LDK Solar Sec. Litig.*, No. 07-5182, 2010 U.S. Dist. LEXIS 87168, at \*8-10  
 6 (N.D. Cal. July 29, 2010), the court approved a \$10,000 award to compensate the named plaintiff  
 7 for out-of-pocket expenses and significant time spent assisting counsel with the litigation. *See*  
 8 *also Cicero v. DirecTV, Inc.*, No. 07-1182, 2010 U.S. Dist. LEXIS 86920, at \*19-20 (C.D. Cal.  
 9 July 27, 2010) (approving \$7,500 and \$5,000 time and expense awards “for their efforts on  
 10 behalf of the class”); *In re McKesson HBOC, Inc. ERISA Litig.*, 391 F. Supp. 2d 844, 851 (N.D.  
 11 Cal. 2005) (approving \$5,000 awards for two named plaintiffs “for their roles in prosecuting the  
 12 Action on behalf of the Settlement Class”). These cases are based on the fundamental premise  
 13 that named plaintiffs undertake obligations, provide input and take risks not shared equally by  
 14 absent class members, thus justifying different treatment. The amounts awarded in reported  
 15 cases vary widely from token payments to amounts in the tens or -- rarely -- even hundreds of  
 16 thousands of dollars. *See Fears v. Wilhelmina Model Agency, Inc.*, 2005 U.S. Dist. LEXIS 7961,  
 17 \*9-10 (S.D.N.Y. 2005) (approving time and expense reimbursements of \$25,000 and \$15,000;  
 18 noting cases approving awards as low as \$336 and as high as \$303,000 with most awards being  
 19 in the \$10,000 to \$50,000 range); *Barel v. Bank of Am.*, 255 F.R.D. 393, 402-03 (E.D. Pa. 2009)  
 20 (approving award of \$10,000 to class representative for services performed for the benefit of the  
 21 class as being within range of awards courts have determined to be reasonable).

22 The court in *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001),  
 23 recognized that courts routinely approve service fee awards to compensate named plaintiffs for  
 24 the services they provided and the risks they incurred during the course of the class action  
 25 litigation. The decision to award service fee payments to class representatives is within the trial  
 26 court’s discretion. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462-63 (9th Cir. 2000).



Not only did these named Plaintiffs devote a significant amount of their time to assisting Plaintiffs' Counsel, which merits a time and expense reimbursement for the reasons explained in the above-cited cases, but the awards will also be paid by NVIDIA from the \$13 million and are separate and apart from any benefits conferred to the Settlement Class. That is, the service fees are just like the attorneys' fees and costs award; the source of payment was separately negotiated and agreed to by the parties after all the material terms of the settlement of the Settlement Class's claims had been reached. Should the Court not approve awarding service fees to these named Plaintiffs, the money will not flow to the Settlement Class, it will simply remain with NVIDIA or Plaintiffs' counsel.

### III. CONCLUSION

For all of the foregoing reasons, the Court should award Plaintiffs' Counsel's motion for attorneys' fees and expenses in the amount of \$13,000,000. Additionally the Court should award time and expense reimbursements totaling \$32,947.50 to named Plaintiffs Todd Feinstein, Nathan DeBockler, Steven Nakash, Lance Waidzunus and John Russo. These requests are reasonable and appropriate, and will in no way reduce the benefits provided to the Settlement Class.

DATED: October 15, 2010

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\_\_\_\_\_  
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## **EXHIBIT A**

### **HP Repair Comments**

**When asked what they were told by HP customer service representatives, class members repeatedly noted that HP quoted their repair costs at or about \$400.00**

#### **Examples:**

“[I was told t]hat my model because I have a intell board is not in the extended warrenty, only the amd boards are. and they want me to pay 399 to fix the notebook[.]”

“[I was informed that] HP wants me to pay \$400 to replace the motherboard, which will be an exact replica of the mobo I have with the SAME defective part.”

“[I was notified that t]hey would charge \$400 to put in another motherboard. I instead found a repair shop that fixed the nvidia card. It did fail due to overheating.”

“[I was told that m]y problem doesn't fall under warranty. [I would have to p]ay \$398 to have HP fix it.”

“[I was told that my model was o]ut of warranty. [HP] Did offer a \$400 mail-in repair.”

“I had many discussions with tech support. Referred to Customer Service. It was 1 or 2 months out of warranty so I would have to pay HP \$398 UP FRONT to have it fixed. Although I had not described the problem to the person - she "guaranteed" me that [...]”

“[I was informed that] I need to pay for the repair[:] \$400. They will change the motherboard.”

“[I was notified that I was o]ut of [my] 1 year warranty[; HP] would fix [my computer] for 400 dollars[.]”

“They told me it would be \$400.00 to fix the issue with the notebook. I spoke with the customer service 1-800 number.”

“[I was told that s]ince I was (conveniently) out of warranty, I was not eligible for a free repair; I had to pay \$400. I know HP has an extended warranty but my computer is not on the list. An HP support rep told me this was because the computers affected only had AMD chip[.]”

## **EXHIBIT B**

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*Interim Lead Class Counsel*

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

THE NVIDIA GPU LITIGATION	)	<u>CLASS ACTION</u>
	)	
	)	Case No. C 08-4312 JW
This Document Relates To:	)	
	)	PLAINTIFF TODD FEINSTEIN'S
ALL ACTIONS.	)	RESPONSES AND OBJECTIONS TO
	)	DEFENDANT NVIDIA'S FIRST SET OF
	)	INTERROGATORIES

PROPOUNDING PARTY: Defendant NVIDIA CORPORATION

RESPONDING PARTY: Plaintiff TODD FEINSTEIN

SET NUMBER: ONE (1)

PLAINTIFF TODD FEINSTEIN'S RESPONSES AND OBJECTIONS TO NVIDIA'S FIRST SET OF INTERROGATORIES		CASE NO. No. C 08-4312 JW
--	--	---------------------------

1 temperatures; had a screen which was fuzzy and displayed only grey or black at certain times;  
2 and periodically shut down entirely without warning.

3 On or about May 31, 2009, the notebook shut down and refused to boot up. The same  
4 day, Plaintiff Feinstein called Apple's technical support line -- they were unable to resolve the  
5 problem. On or about June 1, 2009, Plaintiff Feinstein took the notebook to the Apple store.  
6 After he had been there several hours, he attempted to demonstrate the problem to an Apple  
7 employee by pressing the power button -- the notebook then booted up.

8 On or about July 17, 2009, the notebook again shut down and refused to boot up. On or  
9 about September 24, 2009, Plaintiff Feinstein visited the Apple Store and explained the previous  
10 instance when the notebook had refused to start, surmising that the issue was a faulty internal  
11 power connection. The Apple employee stated that this was possible, and that it would cost  
12 \$300 to repair the notebook. Plaintiff Feinstein paid this amount and left the computer at the  
13 store. On or about October 3, 2009, Plaintiff Feinstein returned to the Apple Store to retrieve the  
14 notebook. He then discovered, for the first time, that Apple had not repaired or replaced the  
15 internal power connection but had, instead, replaced his logic board. On or about October 8,  
16 2009, counsel for Plaintiff Feinstein contacted several Apple repair centers in an effort to retrieve  
17 the logic board, but were ultimately unsuccessful.

18  
19 INTERROGATORY NO. 2:

20 Describe, with as much detail as possible, all actions and efforts taken by YOU or on  
21 YOUR behalf in response to each and every PROBLEM with YOUR COMPUTER including,  
22 without limitation, any COMMUNICATIONS between YOU and APPLE, YOU and NVIDIA or  
23 YOU and any MERCHANT.

24 RESPONSE TO INTERROGATORY NO. 2:

25 Plaintiff incorporates herein the above General Objections and further objects to this  
26 interrogatory insofar as it seeks information protected by the attorney-client privilege, the work  
27 product doctrine and/or any other applicable privilege or immunity. Plaintiff further objects to  
28 this interrogatory as vague, ambiguous, overbroad, unduly burdensome, unreasonably

1 to ongoing discovery. Subject to and without waiving the foregoing objections, discovery is  
2 ongoing and Plaintiff will supplement these responses in accordance with the Federal Rules of  
3 Civil Procedure, the Local Rules of the Court or other applicable statutes or common law.

4  
5 DATED: February 8, 2010

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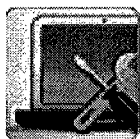
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27  
28



## **EXHIBIT C**



## Laptop

Join the conversation about Dell laptop/notebook computers and mobile workstations.

### XPS M1210 dead nvidia GPU repair options?



Posted by **another-dead-xps-m1210** on 1 Feb 2010 7:08 AM

Hello all, my \$2,000 dell xps m1210 became useless some days ago, showing no video at all on the main lcd screen, neither on an external display when I try to power it on. I can see all the leds in the chassis behaving normally and I can also feel and hear the hard drive operating normally. This began a very long time ago, the screen would randomly freeze with some green vertical or horizontal lines followed by a blue screen of death, but would be fine after reboot for a week or a month before it happening again, it mostly happend whie viewing video content.

Now that theres no image at all (making the laptop useless), I searched online for similar problems and fixes, and I found many people were having the same issues, and discovered that there is in fact, a problem with defective nvidia graphics cards for which dell had given an extra year of warranty to fix this problem, however, at no point did I receive a notoficacion from dell about the existence of an extended warranty, (they have my info on record) which I would have used and appreciated as a loyal customer that I have been for dell computers. On a side note, my Lexus dealer calls and E-mail me every time a recall affects or might affect me and thats the kind of service that keeps me coming back.

I spent about three hours talking to the tech support to see If I could get any help which kept transferring me to other people and supervisors who required me to explain the situation over and over, and every single one of them started denying there was a problem with these computers, or gpu's to be more specific, then after telling them that the previous tech aknoleged the problem, they woul beging aknoledging it too, but then used the excuse that i was out of the extended warranty (for wich I was never notified).

Frustrated with tech support for not being able to help me with something that has nothing to do with normal tear and wear and which looks more like defective units sold to people, I decide to talk to the out-of-warranty repair techs just to see how much it would be and the tech estimated the repair at (about) \$550.00 which is totally unacceptable for something that has to do with a defecctive product.

Not only have I been a loyal dell customer, but as a computer technician, I have recomendad dell products many many times, well, I gues we live in an unfair world where I give you business and you give me the finger, good thing I can always change my product brand preferences and recomendations.

Now that we know that dell is not going to help us, can anyone help me and all the other people that are going through the same situation, and share an inexpensive fix that we can do ourselves even if it requires soldering (because the gpu is soldered to the motherboard)?



Posted by **ein63** replied on 1 Feb 2010 8:10 AM

You have two options:

Replace the mainboard with one with an Intel chip (you'll need a new heatsink), or

Replace the mainboard with one that uses the nVidia chip you now have.

The video chip is a permanent part of the mainboard - it has hundreds of solder points. No human being could remove and replace it successfully (it is mounted by machine in an SMT device at the assembly line).



Posted by **another-dead-xps-m1210** replied on 1 Feb 2010 8:22 AM

Only responses from non dell employees please, thank you, you have done enough damage already.



Posted by **ein63** replied on 1 Feb 2010 8:30 AM

Since I don't work for Dell, and never have, your blindness to the truth couldn't be more plain - you want the answer you want, regardless of the truth. So, get out your soldering iron and your microscope and have at it.



Posted by **another-dead-xps-m1210** replied on 1 Feb 2010 9:17 AM

Im pretty sure someone at some point will come up with a better solution than spending in repair, what a decent new computer costs. **We are looking for positive and reasonable options.**

Posted by **DCX4EVER** replied on 1 Feb 2010 9:30 AM

Although the previous poster offered what I thought was a reasonable response you still want to repair. The only nvidia repair short of an rma that I am familiar with is the oven baking method. Completely remove all accessories from the mb and place in an oven on a baking sheet. Support the mb at each corner with balls of rolled up aluminum foil. Bake in oven at 350F for 15 to 20 minutes. The theory is that the original solder cracks from constant heat cycling over time. Please use at your own risk and google for complete instructions. Good Luck....



Posted by **another-dead-xps-m1210** replied on 2 Feb 2010 7:27 PM

To keep it simple, **it seems reasonable only if you dont know the price tag, which by dell's estimate is around \$550.00.**

**So, \$550 for a repair of adefective part that dell doesnt want to take responsibility for, OR, you can buy a whole new computer with that money.**

**Last week I bought a laptop** for my fiancée; a HP Pavilion dv4-2045dx with 320gb 7200 rpm Sata hard drive, 2.2 ghz AMD Turion II dual core, digital media card reader, 4gb Ram, webcam ,microphone, Ati Radeon 4200HD 128mb graphics card. I loved my xps1210 but im suprised how this much cheaper computer beats it in many ways.

**What was the price tag for that computer? what a coincidence... \$549.99** , you can look it up online. I will never give Dell any more money.



Posted by **ein63** replied on 2 Feb 2010 7:38 PM

Call HP and ask what they charge for a replacement board - and the chances that you'll need it are pretty good, too - much higher than with your Dell.

<http://www.digitaltrends.com/computing/asus-toshiba-notebooks-top-squaretrades-reliability-figures/>



Posted by **another-dead-xps-m1210** replied on 2 Feb 2010 8:16 PM

Regardless of the price, these particular cases are arising from defective components on Dell computers wich Dell should fix, I am not here to discuss wich company has cheaper or more expensive parts, I was just making the point that we are required to spend about \$550.00 dollars for a repair that should be taken care of by Dell, and with that money we can just go and buy a whole new computer that might

even have better specifications (today for that \$550.00 price) than these xps m1210's.

**I would go with a new computer, definetly another brand, just because I was left in the cold by Dell, not because the parts are expensive.**

---



Posted by **ejn63** replied on **2 Feb 2010 8:19 PM**

You may think you bought another brand - but Dell and HP both use Quanta as their major supplier -- that is, your new system is likely just a Chevrolet replacing your problem Pontiac.

Here's how HP handles its common mainboard failures:

[http://getsatisfaction.com/hp/topics/hp\\_pavilion\\_dv\\_6000\\_motherboard\\_failure](http://getsatisfaction.com/hp/topics/hp_pavilion_dv_6000_motherboard_failure)

Before anyone reading this takes the recommendations of the aggrieved, by all means do some research.

---



Posted by **another-dead-xps-m1210** replied on **2 Feb 2010 8:27 PM**

You can put all the links you like and you still wont change my mind about not giving Dell any more businness by me or my peers.

**Again, regardless where the parts come from or how much they are, Dell was the company that left us in the cold when we needed their support that arrised from their mistakes, thats why I now buy from other companies not because they have better parts.**

**You behave just like any other dell employee, you defend Dell till the end but do not offer any REAL help.**

---



Posted by **ejn63** replied on **2 Feb 2010 8:37 PM**

I'm posting not for you - there's no point in changing your mind; it's made up based on fallacy. I'll continue speaking the truth to advise those who might end up mislead by your posts.

---



Posted by **WinStart** replied on 30 Mar 2010 5:27 AM

well I have 4 of this laptop... have been costumer for many year and spend over 50 000 \$ to Dell.

But after this laptop error I am now switching supplier.

Main reason is the way Dell treat their old, good costumer.. (spending over 5 000 \$ should class me as good?? maybe not for Dell).



Posted by **dmateoyu** replied on 13 Apr 2010 1:59 PM

Hi,

I actually just experienced this exact same problem but instead of looking for a fix I decided to just buy a new laptop. My problem now stems from finding out whether or not my hard drive has a problem, basically can I still get access to my data in my Dell M1210's hard drive.

I know my PC boots up and I use an external monitor to see things loading (albeit with highly pixelated graphics due to my graphics card conking out), it shows the Windows XP loading screen but then after that my monitor goes dark. When i try to start safe mode it doesn't fully start as well.

Should i jsut buy an external HD case and then try to access the hard drive through that?

many thanks!

-Derek

Posted by **mcinturf** replied on 14 Apr 2010 11:44 AM

Well...I really dont have a solution to your problem, being essentially in the same boat, but I did notice your post was very similar to the one I have posted so I just thought I'd let you know where I was with it. And to be honest it looks like you may be on your second but I dont think it will ever be really solved because I am having my 3rd (refurbished) chip soldered in by Out of Warranty Repair. See below. Oh..and yeah.my GPU failure was the exact same symptoms...all three times.

I was hoping someone could advise me on my options here. My laptop was repaired back in April of last year. It was out of warranty being purchase in 2007 so I paid 200 to have the GPU replaced. This apparently is a very common problem with these laptops. Surprisingly (or not),, the GPU failed again in August of 2009, just 4 months or so later. They replace it again (this time for free on their behalf) and It seemed to be fine. The funny thing is that I NEVER move this laptop from my desk. Its never used for gaming, mostly used for email and internet, and frankly spends 90% of its life in standby. Both fans are functioning fine and it never has any viruses. So just the other day I open the lid to wake it from standby and the screen is black. Upon reboot I get the very familiar colored lines across the screen and am now forced to run with the nvidia disabled to even use the thing. So I guess I have two questions:

1) How do I ACTUALLY reach someone from out of warranty repair to get the laptop serviced again (3 times a charm?)

2)Do you think this will be covered considering I had paid for the repair and this is the 3rd time in 1 yr that it has failed. I suspect they use reburshished chips in these repairs. Anyone know? I guess thats 3 questions.

Just thought I would share and hope somebody has some suggestions. Im sure there are others who have been in this boat.

Ok...update. I have a service request in now but of course I have to pay for it again. They really have you by the balls here. They will only put refurbished chips that they know will fail and will only warranty the repair for 90 days. This means with almost certainty that the customer will be forced to pay out 200 dollars as often as 4 times a year if they want to use their \$2500 laptop. Anyone have any suggestions on how I can keep this laptop working for longer than 8 months (most recent failure)? I only check email and internet on it really. No gaming. What are my options here? Any help would be appreciated.







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to schedule a demo.



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**XPS M1330 faulty GPU options?? Cost? Please help!**

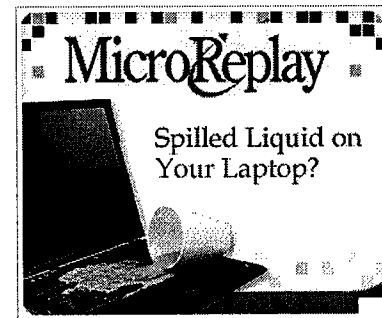
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01-28-2010, 01:07 AM #1 (permalink)

**sowatup**  
Notebook Geek

Join Date: Aug 2007  
Posts: 76  
Rep Power: 8

**XPS M1330 faulty GPU options?? Cost? Please help!**

I have the XPS m1330 with the nVidia 8400 GPU. Got it back in September of 2007 with just one year warranty. I just started getting the rainbow colored vertical lines on the screen today, did research, and found out it is due to faulty GPU design. Called up Dell, and they said even my one year extended warranty due to this common GPU error was over in September of 2008. They also said I am out of luck, unless I want to go through their out of warranty repair department.

I didn't use the laptop on regular basis till just 8 months ago when my old one finally gave out of me after 6 years. So m1330 has been only used for 8 months, and now I am stuck with bunch of verticals lines, and no hope.

Has anyone tried the out of warranty repair department for this problem? How much should it cost to, I am assuming, replace the motherboard?

And also, does replacing the motherboard really fix the GPU/vertical lines on screen problem?

Any other options I have with that? Should I put it in a freezer and try it? (just kidding about that one, just frustrated with this).

Umang  
(503) 888-8231

01-28-2010, 01:38 AM #2 (permalink)

**callanish**  
Notebook Consultant

Join Date: Sep 2007





**Re: XPS M1330 faulty GPU options?? Cost? Please help!**




Well, if by fixing, you mean with another Nvidia motherboard, then the answer would be no. It might buy you another year or two, but eventually it'll just fail again. I resorted to buying a service for \$250.00 on Ebay, which included return shipping, for an installation of the Intel version motherboard rather than the one with the Nvidia one and so far I couldn't be happier. I wasn't doing anything GPU extreme with the old one, so from my perspective I can't tell a whole lot of difference in speed between the Nvidia and the Intel motherboards. It does run cooler, I can tell you that. So, as far as options, you can install the Nvidia motherboard again and role the dice or you could either install the Intel motherboard yourself or get an outside service to do it.

## Dell Links

[Dell Laptop Coupons](#)[Dell Laptop Reviews](#)

## MOST SHARED


 Lenovo ThinkPad X201  
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 Lenovo G550  
[LENOVO \\$549.00](#)

 Lenovo ThinkPad T410  
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 Lenovo ThinkPad T60


 Dell Studio XPS 16  
[Dell Home Syste](#)  
[\\$1,489.99](#)

 Asus G73JH  
[ABT \\$1,618.00](#)

 Alienware m11x  
[Dell Home Syste](#)  
[\\$1,419.00](#)

 Dell Latitude D620


 HP EliteBook 8540w


 Asus Eee PC 1215N

 Posts: 162  
 Rep Power: 8

QUOTE

01-28-2010, 02:58 AM

#3 (permalink)

**sowatup**

Notebook Geek

 Join Date: Aug 2007  
 Posts: 76  
 Rep Power: 8
**Re: XPS M1330 faulty GPU options?? Cost? Please help!**

Callanish, thank you so much for your reply! Yeah, by fixing it, I am thinking to just get it replaced with another nVidia GPU through Dell's out-of-warranty repair dept. Even if I can get another year out of it, it would be great. Graphics is pretty important to me, as I do lots of modeling (i.e. CATIA and SolidWorks). If even by replacing with a newer motherboard w/ the same nVidia GPU will get me an year, I am saving up (~ \$2,500) to buy a decent multitouch convertible with i5/i7 CPU (i.e. Fujitsu T900, HP TM2t, or something similar).

I just need it to start working and last me even 7-8 months till I am done with school, and wanting to make sure it just won't give out on me in like a month or so, and also wanting to know what the cost would be going through out-of-warranty dept, if anyone as done that.

Thank you once again for your reply!

QUOTE

01-28-2010, 03:00 AM

#4 (permalink)

**sowatup**

Notebook Geek

 Join Date: Aug 2007  
 Posts: 76  
 Rep Power: 8
**Re: XPS M1330 faulty GPU options?? Cost? Please help!**

I also do a fair bit of video editing using Sony Vegas and Premiere, and so far 8400 has met my needs. I don't know if Intel X4500HD would meet those needs or not. Can't find any good comparison reports between the two.

QUOTE

01-28-2010, 04:08 AM

#5 (permalink)

**moral hazard**

Notebook Prophet


 Join Date: Jun 2009  
 Location: Australia  
 Posts: 5,713  
 Rep Power: 27
**Re: XPS M1330 faulty GPU options?? Cost? Please help!**
 Free fix:  
 width="480"


height="295"&gt;

MSI GT627/1651 ID2:  
 SP9400 3.5ghz | 2gb 800mhz ram (OC to 984mhz 6-8-8-24) | 160gb 7200 RPM HDD (7K320) |  
**FX 3700m** Using GTX 280m driver | 1280x800 | Dual boot XP and win7 | 12875 3dmark06  
 (1280x800, 571/944, CPU 3.06ghz), Vantage P6012 (1280x1024, GPU stock, CPU 3.06ghz)  
 [Internal SLC SSD through esata mod might be comming soon]

QUOTE

01-28-2010, 08:58 PM

#6 (permalink)

**sowatup**

Notebook Geek

 Join Date: Aug 2007  
 Posts: 76  
 Rep Power: 8
**Re: XPS M1330 faulty GPU options?? Cost? Please help!**

So I called Dell's out-of-warranty repair department, and they quoted me \$580 plus tax to fix the motherboard. Not only that, but I will have to ship it, and it will take them 15-20 business days to fix it and ship it back to me.

Almost \$600?! Kidding me?!

QUOTE

01-28-2010, 09:46 PM

#7 (permalink)

**LordRasta**

Notebook Consultant

**Re: XPS M1330 faulty GPU options?? Cost? Please help!**

Did you review the video from above?


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 security  
 that won't  
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 down.

FREE TRIAL

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 MICRO



Join Date: May 2007  
Posts: 115  
Rep Power: 9

[QUOTE](#)

01-28-2010, 11:52 PM

#8 (permalink)

**sowatup**  
Notebook Geek

Join Date: Aug 2007  
Posts: 76  
Rep Power: 8

**Re: XPS M1330 faulty GPU options?? Cost? Please help!**

Yeah, I did! But I don't know what tool he is using! ☹️ I can open it up and everything, only if someone could tell me what that is. Looks like an air blower?

[QUOTE](#)

01-29-2010, 12:04 AM

#9 (permalink)

**yejun**  
Notebook Deity

Join Date: Dec 2007  
Posts: 1,155  
Rep Power: 11

**Re: XPS M1330 faulty GPU options?? Cost? Please help!**

Hot air soldering Iron. You can click the video and see the author's explanation.

[QUOTE](#)

01-29-2010, 01:08 AM

#10 (permalink)

**moral hazard**  
Notebook Prophet



Join Date: Jun 2009  
Location: Australia  
Posts: 5,713  
Rep Power: 27

**Re: XPS M1330 faulty GPU options?? Cost? Please help!**

You can use a heat gun, or try the "oven trick" (google it).

Works best in an oven for some strange reason, or so they say.

If you use a heatgun, don't bring it too close to the chip, you might burn it (I did this to one of mine).

300C is about as hot as you would want with a heatgun. It's different when using an oven. There are many guides on the net, be sure to read some to get a good idea of how it's done.

Here is the best guide I have seen:

[how to repair your dead graphics card in your alienware!!!!](#)

Also I'd say it's better to give it not enough heat then to over do it.

Other people just put their notebook on their bed, block the vents and leave it on for a while, probably use furmark to make the GPU really heat up.

I think the oven is most succesful.

Anyway, just make sure your board is lead-free.

MSI GT627/1651 ID2:

SP9400 3.5ghz | 2gb 800mhz ram (OC to 984mhz 6-8-8-24) | 160gb 7200 RPM HDD (7K320) | **FX 3700m** Using GTX 280m driver | 1280x800 | Dual boot XP and win7 | 12875 3dmark06 (1280x800, 571/944, CPU 3.06ghz), Vantage P6012 (1280x1024, GPU stock, CPU 3.06ghz) | Internal SLC SSD through esata mod might be coming soon☺️

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All times are GMT -5. The time now is 03:58 PM.

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